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*Adkins*  
*P.L. #2*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE: B-190410**

**DATE: April 4, 1978**

**MATTER OF: Service Enterprises, Inc.**

**DIGEST:**

Protest filed with GAO more than 10 days after protester was orally advised of the complete basis for protest, must be considered untimely even though protest may have been filed within 10 days of protester's receipt of written notification from procuring agency which reiterated basis for protest. In circumstances protester had no reason to delay protest until receipt of official written notification of bid rejection.

Service Enterprises, Inc. (Service) protests the award of a contract to another firm for mess attendant services under invitation for bids (JFB) N62255-77-B-0467 issued by the Navy.

The Navy considers the protest to be untimely filed and we agree with the Navy for the reasons stated below.

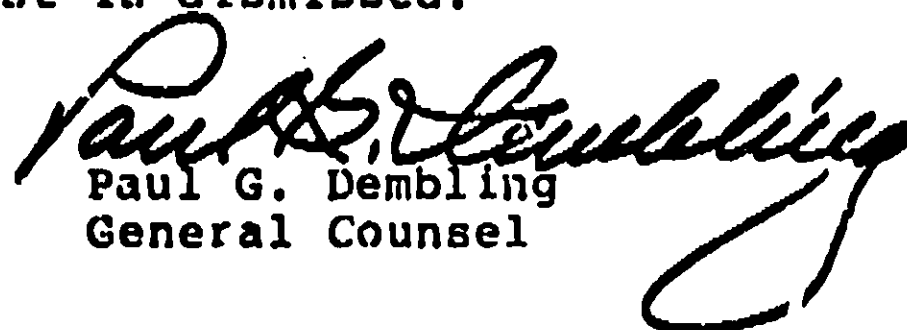
After the bid opening, Service indicated to the Navy that it had made a mistake in its bid and requested upward correction of its bid price or withdrawal if correction was not permitted. On September 27, 1977, Service called the Navy to inquire about the status of the award and was advised that award had been made to another firm. The Navy stated that correction of its bid was disallowed because Service had not presented clear and convincing evidence of its intended bid as required by the procurement regulations. Service was advised that a letter dated September 27, 1977 would reiterate the above. The Navy contends that no protest, oral or written, was made by Service until it filed its protest with GAO on October 13, 1977, which is more than 10 working days after Service was orally apprised of the basis for protest.

The protester stated in its initial submission to GAO that it had orally protested to the Navy on September 27 by telephone and that it considered the Navy's letter of same date to be adverse agency action which it was appealing to GAO. Such an appeal, apparently, would be timely filed within 10 days of the protester's receipt of the September 27 letter. However, the Navy has submitted a contemporaneous memorandum of the phone conversation which indicates that although Service was unhappy with the loss of the contract, the firm did not orally protest with the Navy. In its rebuttal to the Navy report the protester has not contested the agency's position that an oral protest was not made on September 27. It states that on September 30, 1977 the firm orally informed the Navy that it was planning to protest the award and, furthermore, that it did not protest to the Navy because of alleged harassment during performance of its prior contract. The protester nevertheless contends that its protest dated October 12, 1977 was timely under our procedures.

It is not apparent that an oral protest to the Navy was made, and therefore we believe the initial protest in this case was filed with GAO. The question then, is when did the time for protesting to GAO begin to run. Although it may be reasonable for a bidder to await the "official" written notification of the agency's reasons for bid rejection before its time for protesting begins to run, in this case we think the protester should have relied on the oral notification of bid rejection. This bidder orally was told and understood the Navy's reason for disallowing bid correction. The bidder had no reason to think the "official" written notification would provide any additional substantive information in this regard. In fact, the contracting officer states that when the bidder orally was notified of rejection it also was advised that written notice of that date would reiterate the oral advice given. The Public Research Institute of the Center for Naval Analyses of the University of Rochester,  
B-187639, August 15, 1977, 77-2 CPD 16.

Under our bid protest procedures, a protest to GAO must be received not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. 4 Code of Federal Regulations 5 20.2(b)(2) and (3). This protest, therefore, is untimely because it was received by GAO on October 13, 1977, more than 10 working days after notice on September 27 of the basis for its protest.

Accordingly, the protest is dismissed.

  
Paul G. Dembling  
General Counsel